

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.02.2007

CORAM:

THE HON'BLE MR.JUSTICE R.REGUPATHI

CRL.A.NO.983 OF 2000

The Commissioner,
Gobichettipalayam Municipality,
Gobichettipalayam. ...Appellant/Complainant

Vs.

- 1.M.M.Rajaram
S/o Marimuthu Nadar,
12, Palaniappan Street,
Modachur, Gobichettipalayam.
2. M.M.Selvaraj,
S/o Marimuthu Nadar,
No.12, Palaniappan Street,
Modachur, Gobichettipalayam. ...Respondents/Accused

This Criminal Appeal is filed under Section 378 Cr.P.C. against the Judgment of the learned Judicial Magistrate No.I, Gobichettipalayam in S.T.C.NO.284 of 1998 dated 17.4.2000.

For Appellant:Mr.A.K.Kumaraswamy

For respondents: Mr.T.Munirathna Naidu
for M/s R. Duraisamy

J U D G M E N T

The complainant is the Commissioner of Gobichettipalayam Municipality. The accused are the owners of the properties situated at f r.No.124 at Modachur Village. They plotted out part of their properties and got permission for lay out and between 1996-97 and 1997-98, they are in arrears of tax for vacant the site for four half-yearly periods to the tune of Rs.1,15,480/- and since the said amount has not been paid, the complainant Municipality has filed complaint against the respondents under Rule 30(2) and 36 of

Schedule 4 of the Tamil Nadu District Municipalities Act (hereinafter referred to as the Act).

2. Two witnesses have been examined during the course of trial before the learned Magistrate I, Gobichettipalayam. P.W.1 is the Revenue Inspector who has stated in his evidence that during 1996-97 and 1997-98, the accused have not paid the tax and they are in arrears of Rs.1,15,480/- for four half yearly periods. To make payment of the said amount, an intimation has been sent to the accused on 16.11.1998 and acknowledgment has also been received from them. Ex.P.1 is the intimation. Subsequently, confirmation notice has also been issued wherein it has been mentioned that if the accused failed to make payment of the said amount, proceedings will be initiated against them before appropriate forum. Since, the arrears of tax has not been paid, proceedings have been initiated against the accused/respondents. P.W.2 is the Bill Collector of the Municipality who has given evidence to the effect that he has served demand notice as well as confirmation notice.

3. The accused denied the allegations at the time when they were examined under Section 313 Cr.P.C..

4. The first accused examined himself as DW1. It is the case of the defence that the land has been sold to one K.R.Chinnasamy. However the sale deed has not been executed, but only power of attorney has been given under Ex.D1. Ex.D2 is the copy of the receipt for the sale. As per the understanding between the accused and the power agent Chinnasamy, the said Chinnasamy has to pay the said amount, since he has sold the plots to the third parties. One such sale deed is Ex.D3. Under such circumstances, it is contended that the accused are not liable to make the payment of tax.

5. Learned trial Judge on consideration of the materials available on record and after hearing the learned counsel on either side came to the conclusion that the accused/respondents are not liable to pay the tax as per the provisions of the said Act, since it has been sold to the said K.R.Chinnasamy and acquitted the accused.

6. Learned counsel for the appellant appearing for the Commissioner, Gobichettipalayam Municipality submits that the accused are the owners of the land. Even though a power of attorney has been appointed to sell the land, it should be construed that the sale has been effected only on behalf of the accused. Under such circumstances, the primary persons who are responsible for making the payment of tax is the accused. In the event of any arrangement between the principal and the agent of the power of attorney, the accused may recover the same from the purchasers

through the agent. At any rate, the accused are responsible as per the provisions of the Act.

7. Per contra, learned counsel for the accused/respondents submits that entire land has been sold to one K.R.Chinnasamy and since the power has been given to him, the land in question have been sold by K.R.Chinnasamy. Under such circumstances, it is only the said Chinnasamy who is liable to pay the tax and not the accused. It is further submitted that the reasons assigned by the learned Magistrate is well founded.

8. Heard the learned counsel for the appellant as well as the learned counsel for the respondents and I have also perused the materials available on record.

9. The fact remains that the accused/respondents are the owners of the land in question which has been plotted out. It is also the admitted case that the tax for four half yearly period has not been remitted in spite of notice. As per the revenue records, it is only the accused who are the owners of the land. If the accused have executed any power of attorney deed, such arrangement is only between the accused and their agents. The accused who are brothers are only answerable to the complainant. If they have executed the sale deed, then the consequence may be different. Admittedly in the instant case, the accused have executed only power of attorney deed. Under such circumstances, the power agent will be answerable to the accused and in turn the accused will be answerable to the Municipality, as they are owners of the land,

10. Section 30(1) of the Act which reads as follows:

30(1): If the amount due on account of any tax is not paid within fifteen days from the service of the notice or bill or the giving of the direction referred to in Section 95 and 102 and rules 13 and 29 or within three days from the service of the notice referred to in section 108, and if the person from whom the tax is due, has not shown cause to the satisfaction of the executive authority why it should not be paid, the executive authority may recovery by distraint under his warrant and sale of the movable property of the defaulter, the amount due on account of the tax together with the warrant fee and the distraint fee, and with such further sum as will satisfy the probable charges that will be incurred in connection with the detention and sale of the property so distrained:

11. Section 36 which reads as follows:

36(1) Every person who is prosecuted (under sub-rule(2) of rule 30) shall be liable, on proof to the

satisfaction of the magistrate that he wilfully omitted to pay the amount due by him or that he wilfully prevented distraint or a sufficient distraint, to pay a fine not exceeding twice the amount which may be due by him on account of-

(a) the tax and the warrant fee, if any, and

(b) If distraint has taken place the distraint fee and the expenses incidental to the detention and sale, if any, of the property distrained.

(2) Whenever any person is convicted of an offence under sub-rule(1), the magistrate shall, in addition to any fine which may be imposed, recover summarily and pay over to the municipal council the amounts, if any, due under the heads specified in clauses (a) and (b) of sub-rule (1); and may in his discretion also recovery summarily and pay to the council such amount, if any, as he may fix as the costs of the prosecution)

12. Therefore, considering the facts and circumstances of the case, I find that the reasons assigned by the learned Magistrate in acquitting the accused is not sustainable and therefore the order of acquittal passed by the learned Magistrate is set aside, instead the accused are convicted under the provisions of Sections 30(2) and 36 of the said Act. During the course of trial, the accused have not disputed the quantum of the tax arrived at Rs.1,15,480/-. Under such circumstances, the accused/respondents are directed to make payment of the amount under demand. In addition, if the complainant prefers any petition under the provisions of the Act, learned Magistrate may consider and dispose of the same in accordance with law.

13. In the result, the Criminal Appeal is allowed.

VJY

Sd/

Asst.Registrar

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Sub Asst.Registrar

To

The Judicial Magistrate No.I, Gobichettipalayam.

2. - do - Thro The Chief Judicial Magistrate, Erode

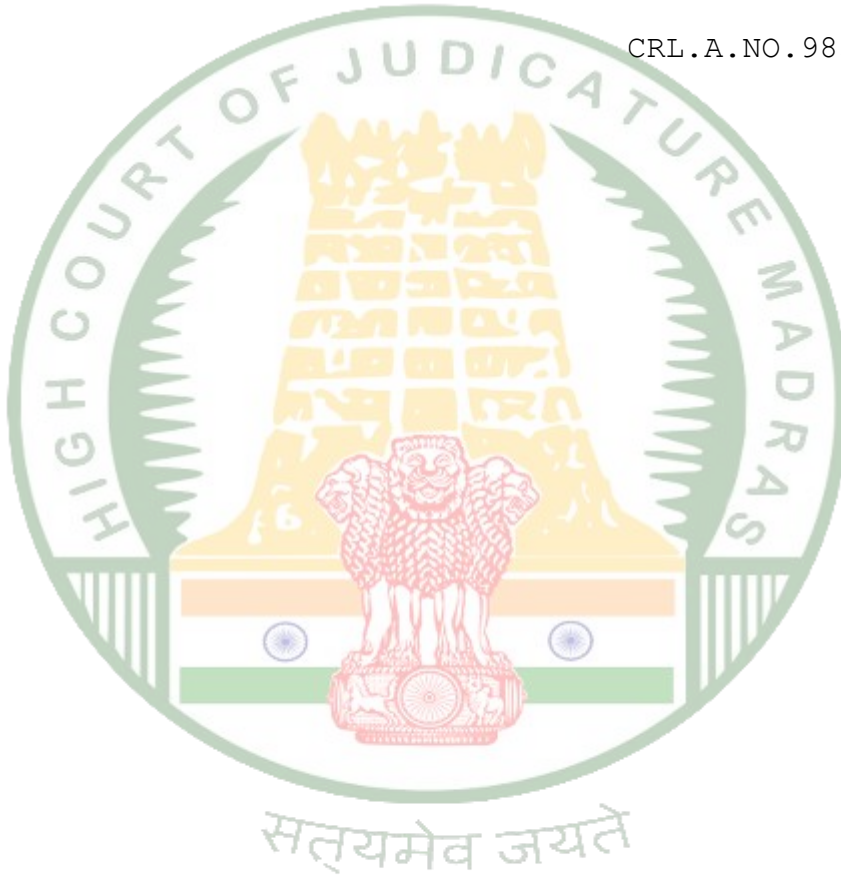
+ one cc to Mr. R.T. Doraisamy, Advocate sr no. 6370

+ one cc to Mr. P.K. Kumarasamy, Advocate sr no. 6467

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